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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,722	09/28/2000	Donald L. Wilson	12548US02	2793

7590 07/07/2004

McAndrews Held & Malloy Ltd
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Chicago, IL 60661

EXAMINER

GRIER, LAURA A

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 07/07/2004

29

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/676,722

Applicant(s)

WILSON ET AL.

Examiner

Laura A Grier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7 and 22-34 is/are allowed.
- 6) ☒ Claim(s) 8 and 15 is/are rejected.
- 7) ☒ Claim(s) 9-14 and 16-21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

The indicated allowability of claim 15-14 is withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iseberg et al., U.S. Patent No. 5887070.

Regarding claim 15, Iseberg discloses a high fidelity insert earphones comprising a housing member (20), which reads on a housing; a receiver (18), which reads on receiver; a eartip formed of a soft compliant material, which reads on a flexible eartip; and a tube portion (35) with end section (42), which indicates the tube nipple, wherein the insert earphone is inserted at least partially into the ear canal and is supported entirely by the ear canal when worn by the user. – (figure 2, col. 3, lines 15-59). Iseberg discloses an acoustic damper. However, Iseberg fail to specifically disclose the acoustic damper located in the tube nipple proximate the 1st end of the tube nipple. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an acoustic damper located in the tube nipple

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proximate the 1st end of the tube nipple, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taenzer et al., U.S. Patent No. 6009183.

Regarding **claim 8**, Taenzer discloses a sound delivery tube system. Taenzer's disclosure comprises a sound delivery system body (12), which reads on a housing; a microphone (26), which reads on a receiver; a sound delivery tube (14) with an ear tip, (16), which reads on the flexible ear tip and a rigid tube nipple, and a flexible channel, and inherently discloses a flexible channel as evident by the fact of a sound transmission tube, therein (figures 1 and 2, col. 2, lines 51-61, col. 3, lines 1-22, and col. 4, lines 20-42). However, Taenzer fails to disclose the response of the TDH-39 standard. The examiner takes official notice that the TDH-39 standard is well known in the art. Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Taenzer by providing TDH-39 standard quality of frequency response at 0db at a frequency of 6 or 8 KHz as desired for optimal performance.

Allowable Subject Matter

Claims 1-7, 22-35 are allowed.

Claims 9-14 and 16-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-7, and 15 have been considered but are moot in view of the new ground(s) of rejection.

Regarding claim 15, the applicant essentially argues that Taenzer et al. fails to disclose the insert earphone supported entirely by the ear canal. The examiner agrees, and another reference of prior art has been submitted in support of the broadest interpretation of claim language.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

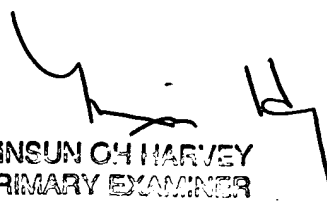
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.



Laura A. Grier
June 26, 2004



MINSUN OH HARVEY
PRIMARY EXAMINER